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MEDICAL CARE PROVIDED TO CALIFORNIA INJURED WORKERS IS TO CURE *OR RELIEVE* THE EFFECTS OF THEIR INJURIES

By Scott O'Mara

The California Workers' Compensation system was created by legislative enactment in 1913 and has evolved gradually since then. With the implementation of the Workers' Compensation plan, the legislative branch by statute has provided specific benefits for California injured workers, specifically medical care to cure or relieve the effects of work injuries, supplementation for lost wages, and potential permanent disability payments. The concept of that bargain was to create an efficient medical system which would cure or relieve the effects of workers' injuries and allow them to re-enter the labor market or have less residual impairment.

On September 18, 2012, Gov. Brown signed Senate Bill 863, which was an attempt to correct errors made in 2004 with the passage of Senate Bill 899. However, the current system has created rigid standards which do not recognize the bargain entered into by California employers and workers, and workers have given up rights and had limits placed upon their medical treatment. Further refinement is required, as many provisions of Senate Bill 863 reduced the responsibility of employers for medical treatment and shifted it to workers and their private health insurance companies.

Treatment recommendations must be "medically necessary". Unfortunately, a new limiting standard has evolved from the interpretations of Utilization Review and Independent Medical Review physicians when there is a dispute concerning medical treatment.

"Medical necessity" is determined according to the following hierarchy: (1) MTUS review; (2) pier-reviewed scientific and medical evidence regarding the effectiveness of the disputed service; (3) nationally-recognized professional standards; (4) expert opinion; (5) generally-accepted standards of medical practice; and (6) treatments which are likely to benefit a patient for conditions for which other treatments are not clinically efficacious.

The directive statute is Labor Code §4600(b) — which reflects the bargain entered into by employers and workers in the early 1900s regarding the responsibility to provide medical treatment which cures *or relieves* the effects of work injuries — currently states in pertinent part:

"As used in this division and notwithstanding any other law, medical treatment that is reasonably required to cure or relieve the injured worker from the effects of his or her injury means treatment that is based upon the guidelines adopted by the administrative director . . .."

Labor Code §4600(b) includes the words "or relieve", which creates a different standard than simply "cure". The misapplied direction of Utilization Review and Independent Medical Review doctors has been to embrace and provide empirical data for the concept that the purpose of the protocol treatment is always to "cure", whereas in many cases the goal is to "relieve". "Relieve" is very common in reference to many medical conditions which cannot be cured. With these conditions, the pain and discomfort and limitations can be relieved, if only temporarily, by a particular methodology of treatment.

The new system which is in place under the Medical Treatment Utilization Schedule directly and indirectly tries to avoid and ignore the concept of "relieve". The direction of the doctors and the systems has the recurrent theme: *Does the protocol in question "cure" the condition?* For many medical conditions, the answer is "No." But the truth is that "relief" can be provided for most of these conditions, minimizing pain, discomfort and other subjective complaints, creating more comfort — a "better day" — for the injured workers affected. This goal falls within the purview of Labor Code §4600(b).

In a recent case, *Loynachan v. County of Los Angeles*, the Workers' Compensation Judge determined that, in the final step of accessing medical care — Independent Medical Review — a denial of help for a worker who had emotional problems was incorrect. The judge specifically stated that IMR's rationale indicated there was insufficient demonstrative evidence of functional cognitive improvement to suggest that the recommended sessions would lead to Loynachan's complete recovery. The judge then reflected that Independent Medical Review ignores the basic Workers' Compensation concept and correct legal standard that what constitutes reasonable and necessary medical care is care which cures *or relieves* a worker from the effects of a work-related injury.

In another case, *Hoffman v. WCAB*, the Court specifically set forth that employers are bound to furnish adequate medical care and treatment for injured workers, and that care and treatment is not "adequate" if it does not include all measures to cure *or relieve*. The judge further stated that palliative measures — measures which mitigate, reduce the severity, or relieve slightly — are compensable.

It is important that injured workers and their doctors recognize that the standard of protection for injured workers and their families in California is expansive, and it encourages workers to return to work (although maybe not to the same environment as before) by relieving their pain and discomfort if not providing a cure for their work injuries.

The artificial standard being imposed by the misinterpretation of the Labor Code and the supposedly cost-saving legislative changes — focused solely on "curing", as opposed to "curing *or relieving*" — has created harm rather than benefit for injured workers.

Despite Senate Bill 863 and the misguided artificial standards imposed by Utilization Review and Independent Medical Review, the reality is that there is medical care which cures, *and there is also medical care which "relieves" the effects of a work-related injury*. As established by law, California injured workers are entitled to receive medical care which cures *or relieves* them from the effects of their injuries.

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